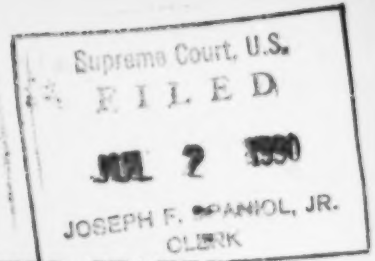


90-467



No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
October Term, 1989  
\_\_\_\_\_

CHARLES A. FAHRIG and SHIRLEY A. FAHRIG,  
*Petitioners,*

vs.

THE HONORABLE WILLIAM H. WOLFF, JUDGE,  
THE HONORABLE JAMES A. BROGAN, JUDGE,  
THE HONORABLE RICHARD K. WILSON, JUDGE,  
REBECCA J. WOLF, COURT ADMINISTRATOR,  
*Respondents,*

\_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF OHIO  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

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*Petitioners, Appearing Pro Se*

\_\_\_\_\_  
PREPARED BY PETITIONERS



## QUESTIONS PRESENTED FOR REVIEW

1. Whether a Court of Appeals has jurisdiction to render orders or to act in any manner with relation to the rights and liabilities of an appellant, except to act in aid of and not inconsistent with the appeal, after an appeal has been filed and docketed in the Supreme Court of the State and which appeal had been taken from a dismissal order previously rendered by the same Court of Appeals.

2. Whether a petitioner, upon appealing the dismissal of a case to a higher court, is entitled to have either or both a writ of mandamus and a writ of prohibition issue; (1) a writ of prohibition to prohibit the lower court, while it is without jurisdiction, from rendering any additional orders after the lower court had rendered an order, save for those in aid of perfecting the appeal; and (2) a writ of mandamus to expunge the void order which the lower court had previously rendered while it was without jurisdiction.



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vs,

**THE HONORABLE WILLIAM H. WOLFF, JUDGE,  
THE HONORABLE JAMES A. BROGAN, JUDGE,  
THE HONORABLE RICHARD K. WILSON, JUDGE,  
REBECCA J. WOLF, COURT ADMINISTRATOR,**  
*Respondents,*

\_\_\_\_\_

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF OHIO**

\_\_\_\_\_

**PETITION FOR WRIT OF CERTIORARI**

\_\_\_\_\_

Petitioners Charles A. Fahrig and Shirley A. Fahrig are filing the within petition for writ of certiorari and are hereby respectfully requesting that a writ of certiorari issue to the Supreme Court of Ohio.

## JUDGMENTS BELOW

The judgment appealed from, dated January 31, 1990, in case 89-1964, is set forth in the appendix on page App. A1.

The following judgments, etc. are referred to in the petition for certiorari and are set out in the appendix as noted below:

1. Notice of appeal as filed in Case No. 89-1525 on August 30, 1989 and set out in the appendix on page App. A5.
2. Decision and Entry in Case CA 10866 on September 8, 1989 and set out in the appendix on page App. A2.
3. Entry in Case 89-1525 on October 4, 1989 and set out in the appendix on page App. A7.
4. Entry in Case 89-1525 on November 1, 1989 and set out in the appendix on page App. A8.
5. Entry in Case 89-1667 on December 13, 1989 and set out in the appendix on page App. A9.

## GROUND ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The jurisdiction of this Court is invoked on the grounds that the Supreme Court of Ohio, *in upholding* the particular state action by the Court of Appeals in rendering a void and unauthorized judgment on September 8, 1989 after petitioners had filed an appeal in the Supreme Court of Ohio, and also on the grounds that the Supreme Court of Ohio

- a. *in summarily dismissing* petitioners' appeal, case number 89-1525, and also
- b. *in summarily dismissing* petitioners' complaint for mandamus which asked that the void order by the Court of Appeals on September 8, 1989, be 'expunged',

offends neither federal or state action.

Petitioners believe that this Honorable Court has the power to review the state supreme court judgment, though on the federal question only, if this Court determines after a search of the record that the Supreme Court of Ohio has upheld the particular state action by the Supreme Court itself and by the Court of Appeals on the ground that it offends neither federal nor state law.

Petitioners can demonstrate that the state ground is not independent and adequate and can not account for the decision below - the summary dismissal of petitioners' complaint for writ of mandamus.

Petitioners believe that a search of the record will indicate that the asserted state ground for the summary dismissal

without hearing of petitioners' complaint for writ of mandamus is not independent or adequate and that therefore it will be presumed that the Supreme Court of Ohio based its judgment on the law raising the federal question, and therefore this Court can take jurisdiction and hear this cause.

The date of judgment sought to be reviewed is January 31, 1990 (App. A1).

The date of order for extension to file petition for writ of certiorari is April 25, 1990, extending time to and including June 30, 1990, and further extended to and including Monday, July 2, 1990 by Rule 30 of the Rules of the Supreme Court.

The statutory provision conferring jurisdiction to review judgment by writ of certiorari is U.S.C. Title 28, Section 1257.

**SPECIAL NOTE TO THIS HONORABLE COURT:** Case 89-1667, as set out above, was a complaint for writ of prohibition filed on September 25, 1989 in the Supreme Court of Ohio against the same respondents as named in this petition and was summarily dismissed by the Supreme Court of Ohio on December 13, 1989 (App. A9). On April 30, 1990 Justice Scalia extended petitioners' time for filing a petition for writ of certiorari for case 89-1667 to May 19, 1990, and number A-761 was assigned. Since case 89-1667 involves 'closely related questions', having been filed from the same set of facts as this case, 89-1964, this Court can entertain this petition for writ of certiorari for both cases pursuant to Rule 12.2 of the rules of this Court.

**CONSTITUTIONAL PROVISIONS, STATUTES,  
AND RULES INVOLVED IN THIS CASE**

**Constitutions:**

Ohio Const. Art. I, Section 16 (App. A10)

Constitution of the United States,  
Amendment XIV, Section 1 (App. A10)

**Supreme Court of Ohio Rules:**

Rule 1, Sections (1)(A) & (B) (App. A11)

**Appellate Rules:**

Rule 26 - Ohio Appellate Rule (App. A12)

**Ohio Rules of Civil Procedure:**

Rule 12(B)(6) (App. A13)

## STATEMENT OF THE CASE

The following is a summary of the case numbers which are referred to throughout the statement of the case and are recited here for clarity.

89-1964     A complaint for writ of mandamus filed November 16, 1989 in the Supreme Court of Ohio and for which this petition for writ of certiorari is being filed.

89-1667     A complaint for writ of prohibition filed September 25, 1989 in the Supreme Court of Ohio.

89-1525     Appeal filed in the Supreme Court of Ohio on August 30, 1989 of Case CA 10866.

CA 10866     Appeal filed in the Court of Appeals for the Second Judicial District on March 7, 1988.

This case involves a complaint for writ of mandamus, case number 89-1964, filed on November 16, 1989 in the Supreme Court of Ohio. These petitioners requested that a writ of mandamus issue against the judges and the court administrator of the Court of Appeals for the Second Judicial District of Ohio, ordering and directing them to expunge from the records of the court of appeals the void and unauthorized Decision and Entry rendered on September 8, 1989 in case number CA 10866 while the case was already on appeal to the Supreme Court of Ohio.

On December 22, 1988 the Court of Appeals had remanded case number CA 10866 to the trial court for

settlement of part of the record. However, while the case was still on remand, the Court of Appeals summarily dismissed case number CA 10866 on June 30, 1989 for failure to prosecute the appeal and for failure to file a brief on the merits.

Pursuant to Ohio Appellate Rule 26 (App. A12) these petitioners filed on July 10, 1989 a motion for reconsideration of the dismissal of June 30, 1989.

Pursuant to Ohio Supreme Court Rule 1, Sec. 1(A) (App. A11) petitioners then filed on July 31, 1989 in the Court of Appeals their notice of appeal of case number CA 10866 to the Supreme Court of Ohio; and further, pursuant to Supreme Court Rule 1, Sec. 1(B) (App. A11), filed on August 30, 1989 a copy of the notice of appeal in the Supreme Court of Ohio, together with the payment of the filing fee. The appeal was assigned case number 89-1525. (App. A5)

Eight days after the appeal was lodged in the Supreme Court of Ohio as case number 89-1525 the Court of Appeals, on September 8, 1989, while without jurisdiction of case CA 10866 (which was now on appeal to the Supreme Court of Ohio as case number 89-1525), did render a Decision and Entry ordering these petitioners to file a brief within twenty (20) days of their Decision and Entry, and that failure to do so would result in dismissal of their case. (App. A2) It should be noted here that the trial judge had not as yet settled the record, and further, it should also be noted that the case was now in the Supreme Court of Ohio as case number 89-1525.

On September 20, 1989 the defendant-appellee in case 89-1525 filed a motion to dismiss the appeal and attached to his motion a copy of the Court of Appeals Decision and Entry of September 8, 1989.



On October 4, 1989 the Supreme Court of Ohio by entry (App. A7) ordered petitioners to file their memorandum in support of jurisdiction in case 89-1525 on or before November 3, 1989. However, on November 1, 1989, two days before petitioners had been ordered to file their memorandum in support of jurisdiction, the Supreme Court of Ohio sustained, without opinion, the defendant-appellee's motion to dismiss filed September 20, 1989 and dismissed petitioners' appeal, case number 89-1525. (App. A8)

On September 25, 1989 petitioners, in an attempt to prevent any further unauthorized decisions by the Court of Appeals, did file in the Supreme Court of Ohio a complaint for writ of prohibition, case number 89-1667, asking the Supreme Court of Ohio to issue a writ against the same respondents as in this case from rendering any further decisions while the case was on appeal in the Supreme Court of Ohio as case number 89-1525. This complaint for writ of prohibition, 89-1667, was summarily dismissed without opinion on December 13, 1989. (App. A9)

In addition to the filing of the above described petition for writ of prohibition these petitioners filed on November 16, 1989 a complaint for writ of mandamus, case number 89-1964 (which is this case) against the same respondents, asking the Supreme Court of Ohio to have expunged from the records of the Court of Appeals the void and unauthorized Decision and Entry rendered on September 8, 1989 by the Court of Appeals while it was without jurisdiction and while the case was on appeal to the Supreme Court of Ohio as case 89-1525.

The respondents in case 89-1964 filed two (2) motions to dismiss petitioners' complaint for writ of mandamus, alleging the petition had failed to state a claim for relief pursuant to Ohio Civil Rule 12(B)(6). (App. A13)



The Supreme Court of Ohio sustained respondents' two (2) motions to dismiss and dismissed petitioners' complaint for writ of mandamus, case number 89-1964, without opinion, on January 31, 1990. (App. A1)

The federal question was raised by petitioners by the following documents which were filed in this case:

1. On pages 3 and 4, paragraph 13, of petitioners' complaint for writ of mandamus, No. 89-1964, filed November 16, 1989.
2. On pages 6 and 7, paragraph 24, of petitioners' complaint for writ of mandamus, No. 89-1964, filed November 16, 1989.
3. On page 7, paragraph 27, of petitioners' complaint for writ of mandamus, No. 89-1964, filed November 16, 1989.
4. On page 7 of petitioners' Brief In Opposition To Two Motions To Dismiss filed December 29, 1989 in this case. (No. 89-1964)
5. On page 9 of petitioners' Brief In Opposition To Two Motions To Dismiss filed December 29, 1989 in this case. (No. 89-1964)

The federal question was passed on as follows:

The Supreme Court of Ohio passed on the federal question by dismissing petitioners' complaint for writ of mandamus without opinion.

As to No. 1 above, the complaint for writ of mandamus raised the federal question in the Supreme Court of Ohio on pages 3 and 4, paragraph 13, as follows:

"Relators say that they have been, are being, and will be denied by the aforementioned Defendants their privileges under Article IV, Sec. 2, Subsection 1 of the Constitution of the United States, and under the Fourteenth Amendment to the Constitution of the United States; and further, have been, are being, and will be, denied the EQUAL PROTECTION OF THE LAWS and DUE PROCESS OF LAW as guaranteed by the Fourteenth Amendment to the Constitution of the United States; and further, have been, are being, and will be, denied the 'DUE COURSE OF LAW' as guaranteed to them by the Constitution of the State of Ohio."

As to No. 2 above, the complaint for writ of mandamus raised the federal question in the Supreme Court of Ohio on pages 6 and 7, paragraph 24, as follows:

"Relators say that unless said VOID Decision and Entry of September 8, 1989 is EXPUNGED by the Defendants from the records of the Court of Appeals of the Second Judicial District that Relators will suffer irreparable damage to their cause, Case No. 10866, in the Court of Appeals, and to their appeal of said cause, Case No. 89-1525, in the Supreme Court of Ohio; and further, that Relators will be denied the due course of law as guaranteed to them by Art. I, Sec. 16, of the Constitution of Ohio, and will further be denied the due process of law and the equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States of America."

As to No. 3 above, the complaint for writ of mandamus raised the federal question in the Supreme Court of Ohio on page 7, paragraph 27, as follows:

"Relators say that they are entitled by the due course of law, by the due process of law, and by the equal protection of the laws, guaranteed to them by the Constitution of Ohio and of the United States of America, to have the void Decision and Entry of September 8, 1989, rendered in Case CA 10866, expunged from the records of the Court of Appeals for the Second Judicial District."

As to No. 4 above, the Brief In Opposition To Two (2) Motions To Dismiss raised the federal question in the Supreme Court of Ohio on page 7 as follows:

"For the Ohio Supreme Court to dismiss Relators' appeal, Case 89-1525, for lack of jurisdiction is a denial of the due course of law, due process, and of the equal protection of the laws."

As to No. 5 above, the Brief In Opposition To Two (2) Motions To Dismiss raised the federal question in the Supreme Court of Ohio on page 9 as follows:

"Relators were denied due process and were denied their opportunity to respond before suffering dismissal."

## ARGUMENT

The two issues in this case are simple.

The Court of Appeals dismissed petitioners' third appeal on June 30, 1989.

Petitioners filed a motion for reconsideration of the dismissal of June 30, 1989 on July 10, 1989.

No ruling was made on petitioners' motion for reconsideration and thereafter these petitioners filed an appeal on August 30, 1989 to the Supreme Court of Ohio - Case No. 89-1525. (App. A5)

Eight days after the Court of Appeals no longer had jurisdiction it rendered a decision on September 8, 1989 (App.A2) which was VOID for want of jurisdiction and which was also prejudicial to the cause of these petitioners.

Petitioners continued to perfect their appeal in the Supreme Court of Ohio. Petitioners also filed a complaint for writ of prohibition, case number 89-1667, asking the Supreme Court to prohibit the Court of Appeals from rendering any other decisions in case CA 10866 while petitioners' appeal was being prosecuted in the Supreme Court of Ohio. However, the Supreme Court of Ohio summarily dismissed the complaint for writ of prohibition (App. A9) on December 13, 1989.

Next, petitioners filed a complaint for writ of mandamus, case number 89-1964, asking the Supreme Court of Ohio to 'expunge' from the records the 'VOID' and 'unauthorized' Decision and Entry rendered by the Court of Appeals on September 8, 1989. The Supreme Court of Ohio summarily

dismissed case number 89-1964 on January 31, 1990 (App. A1) and this dismissal is now the case for which these petitioners are asking this Court for a petition for writ of certiorari to the Supreme Court of Ohio.

One issue is whether the Court of Appeals has jurisdiction to render orders, save for those in aid of perfecting the appeal, after an appeal has been filed and docketed in the Supreme Court of the state and which appeal had been taken from a previously rendered dismissal entry by the same Court of Appeals.

Another issue is whether these petitioners were entitled to have issued in response to their complaints for writs of prohibition and mandamus, a writ of prohibition to prohibit the Court of Appeals from rendering any further orders without jurisdiction and also a writ of mandamus (this case) ordering the Court of Appeals to expunge the void order of September 8, 1989 (App. A2) from the records of the case.

To "expunge" an order rendered by a court without jurisdiction has long been recognized by the courts throughout this country. An order rendered by a court without jurisdiction and without authority is VOID.

In *State v Schneider*, 89 Ohio App 96, 100 N.E.2d 863 (1950) the Court of Appeals for Hamilton County held in the third syllabus that an action against judge of Common Pleas Court for *writ of mandamus* could be maintained to have void judgment adverse to the relators expunged from records of Common Pleas Court.

In *People ex rel Woll, U.S. Attorney v Graber*, 394 Ill 362, 68 N.E.2d 750 (1946), the Supreme Court of Illinois held that:

"The Supreme Court had the general power to issue a writ of mandamus to an inferior court to expunge from its records an order, judgment or decree that is void because entered without jurisdiction."

In *People ex rel Daley v Schreier*, 92 Ill2d 271, 54 Ill Dec 874, 442 N.E.2d 185 (1982), the Supreme Court of Illinois held that,

"Mandamus may properly be invoked to expunge a judgment which is void for want of jurisdiction."

For the use of mandamus to set aside VOID judgments for lack of jurisdiction see also *Neal v State*, 55 Cal2d 11, 9 Cal Rptr 607, 357 P2d 839 (1960) and *Riley v Garrett*, 219 Ga 345, 133 S.E.2d 367 (1963).

In *Daley v Laurie, Judge, et al*, 106 Ill2d 33, 86 Ill Dec 918, 476 N.E.2d 419 (1985), the Supreme Court of Illinois held that,

"Jurisdiction of the Appellate Court attaches upon proper filing of a notice of appeal. When the notice of appeal is filed, the appellate court's jurisdiction attaches *instantly*, and the cause is beyond the jurisdiction of the trial court.

Mandamus would lie to direct judges to vacate and *expunge* order.....where.....judges.....were without jurisdiction to enter such orders at time they did so."

In *Lincoln Tavern v Snader*, 165 Ohio St 61, 133 N.E.2d 606 (1956), the Supreme Court of Ohio held that it had the inherent power to vacate a VOID judgment rendered without jurisdiction.

Petitioners state that the Supreme Court of Ohio had jurisdiction when petitioners filed and docketed their notice of appeal on August 30, 1989 as case number 89-1525. (App. A5)

Petitioners further state that the Supreme Court of Ohio recognized that jurisdiction when, on October 4, 1989, the Supreme Court of Ohio, by entry, extended the time for filing of petitioners' memorandum in support of jurisdiction to and including November 3, 1989. (App. A7)

However, two (2) days earlier, on November 1, 1989, the Supreme Court of Ohio dismissed petitioners' appeal by sustaining a motion to dismiss supported by the VOID JUDGMENT of September 8, 1989, and which motion to dismiss held that the Court did not have jurisdiction. (App. A8)

For the Supreme Court of Ohio to dismiss petitioners' appeal, case number 89-1525, for lack of jurisdiction is a denial of the due course of law, due process of law and of the equal protection of the laws. The Supreme Court of Ohio had to have jurisdiction in order to rule upon the motion to dismiss the appeal, case 89-1525. See *Bell v Hood*, 327 U.S. 678, 90 LEd 939 (1946). *The motion to dismiss had to be decided after and not before the Supreme Court of Ohio assumed jurisdiction over the appeal.*

Petitioners had until November 3, 1989 to complete and file a memorandum in support of jurisdiction for case number 89-1525 (App. A7).

The Court of Appeals, by its VOID JUDGMENT rendered on September 8, 1989, without jurisdiction, ordered these petitioners to file a brief within twenty (20) days or suffer dismissal of their case. (App. A2)



These petitioners could not be in two (2) courts at the same time -- *under each court's jurisdiction* -- and obligated and/or permitted by each court to prepare and file papers therein -- *to file a brief in the Court of Appeals* for case CA 10866 and *to file a memorandum in support of jurisdiction in the Supreme Court of Ohio* for case 89-1525, the appeal of case CA 10866.

Petitioners refer this Court to the case of *New York Central R. Co. v Francis*, 109 Ohio St 481, 143 N.E. 187 (1924) in which the Ohio Supreme Court stated on page 189,

"But jurisdiction could not be in both courts at the same time."

Petitioners did file and docket their notice of appeal as case number 89-1525 on August 30, 1989. The Supreme Court of Ohio had jurisdiction to hear the appeal. (App. A5) The Supreme Court of Ohio summarily dismissed petitioners' appeal two (2) days before their memorandum in support of jurisdiction was due on November 3, 1989 -- the appeal was dismissed on November 1, 1989, even though the Supreme Court had ordered these petitioners to file their memorandum in support of jurisdiction by November 3, 1989. Petitioners were denied due process and were denied their opportunity to respond before suffering dismissal.

Petitioners, in support of their petition for writ of certiorari, cite the case of *E. R. Borgmeier, also known as Eleanor B. Johnson, Petitioner v Patrick T. Stone, as Judge of the United States District Court for the Western District of Wisconsin, Respondent*, 233 Fed Rptr2d 818 (1956).

Petitioners contend that *Borgmeier, supra*, supports petitioners' claims both for writ of mandamus in this case, case number 89-1964 and for the writ of prohibition in the companion case, case number 89-1667. (Case 89-1667 was



summarily dismissed by the Ohio Supreme Court on December 13, 1989.) (App. A9)

In *Borgmeier* , supra, the petitioners had filed a notice of appeal -- these petitioners likewise filed a notice of appeal.

In *Borgmeier* , supra, the petitioner was perfecting her appeal--these petitioners were likewise perfecting their appeal and intended to file their memorandum in support of jurisdiction on November 3, 1989 as ordered by the Supreme Court of Ohio. The Supreme Court of Ohio dismissed petitioners' appeal on November 1, 1989, after the defendant-appellee's attorney, Jane M. Lynch, filed a motion to dismiss petitioners' appeal and which motion was supported with the VOID JUDGMENT of September 8, 1989.

In *Borgmeier* , supra, the District Judge, Judge Stone, continued to render judgments and orders after petitioner Johnson had filed her notice of appeal -- the Judges of the Court of Appeals in petitioners' case continued to render a judgment on September 8, 1989 -- the VOID JUDGMENT petitioners were asking the Ohio Supreme Court to "expunge".

In *Borgmeier* , supra, the United States Court of Appeals for the Seventh District, in the interests of affording 'due process' to petitioner Johnson, rendered both a WRIT OF PROHIBITION and a WRIT OF MANDAMUS. The United States Court of Appeals for the Seventh Circuit, in its decision, stated on page 821 as follows:

"...a writ of prohibition will issue forthwith directed to the respondent....commanding him to desist from any further proceedings against petitioner ...and, further,

*a writ of mandamus will issue forthwith directed to the respondent commanding him to (a) expunge the orders entered by him....in said case, (b) to pass upon any motions addressed to him by petitioner, and incidental to the perfection of her appeal and the filing in this court of the record thereon..."* (Emphasis added)

The summary dismissal of both the complaint for prohibition, case number 89-1667, and the complaint for mandamus, case number 89-1964 (this case), never afforded these petitioners an opportunity to be heard. Both dismissals rendered summarily and without opinion and without affording these petitioners an opportunity to be heard, denied these petitioners 'due process' of law and the 'equal protection' of the laws as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States of America (App. A10); and further, denied these petitioners the 'due course' of law as guaranteed to them by Article I, Section 16 of the Ohio Constitution. (App. A10)

In *Schroeder v New York City*, 371 U.S. 208, 9 LEd2d 255, 259, 83 S Ct 279, 89 ALR2d 1398 (1962), this United States Supreme Court has referred to "the right to be heard" as "one of the most fundamental requisites of due process" and,

In *Armstrong v Manzo*, 380 U.S. 545, 14 L Ed2d 62, 66, 85 S Ct 1180 (1965), this United States Supreme Court stated:

"A fundamental requirement of due process is the opportunity to be heard."

Petitioners believe that their federal constitutional rights to 'due process' and to the 'equal protection of the laws' have been and are being denied.

## CONCLUSION

In *Board of Levee Comm'rs v Johnson*, 178 Ky 287, at 298, 199 S.W. 8, at 12 (1917), the Kentucky Court had this to say about the guarantee of 'due process of law':

"(they) have come to be regarded as so fundamental a part of every enlightened system of government that no free people would dare to leave them out of their organic law *and no court would now be so bold as to attempt to set them aside or deprive them of the meaning they have been universally adjudged to have since their insertion in the constitutions of the state and the nation*, and indeed, long before written constitutions were thought of."

(Emphasis added)

The Court of Appeals *boldly* deprived these petitioners of their state right to the 'due course of law' and of their federal right to 'due process' of law and to the 'equal protection' of the laws when the Court of Appeals continued to render decisions after petitioners filed their appeal to the Supreme Court. This deprivation of 'due process' of law and of the 'equal protection' of the laws was made openly and on the record by the Court of Appeals.

The Supreme Court of Ohio upheld the action of the Court of Appeals when it summarily dismissed petitioners' appeal, case number 89-1525, and also when it summarily dismissed petitioners' complaint for prohibition (case number 89-1667) and petitioners' complaint for mandamus, case number 89-1964, which is this case; and, all of which further deprived these petitioners of their rights to 'due process of law' and to the 'equal protection' of the laws as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States of America.

In paragraph 22 of petitioners' complaint for writ of mandamus, case number 89-1964, (this case) petitioners held that their complaint for writ of mandamus was of considerable importance to the orderly administration of justice when they stated:

"...the expunging of the VOID Decision and Entry of September 8, 1989, sought by these Relators (petitioners) to have performed, involves the public interest since the public is entitled to have judgments and decisions and entries rendered by courts only while exercising their proper and legal jurisdiction; and further, that the Decision and Entry of September 8, 1989, sought to be expunged, *is of considerable importance to the orderly administration of justice and to the administration of justice itself.*" (Emphasis added)

Petitioners respectfully ask this Court for the reasons as mentioned in the foregoing petition to issue a petition for writ of certiorari to the Supreme Court of Ohio.

Petitioners wish to inform the Court that they diligently tried to obtain the services of an attorney to represent them for this petition for writ of certiorari but were unsuccessful.

Respectfully submitted,

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**APPENDIX**

**ENTRY OF THE SUPREME COURT OF OHIO**

(Filed January 31, 1990)

Case No. 89-1964

**THE SUPREME COURT OF OHIO**

STATE OF OHIO, ex rel  
CHARLES A. FAHRIG, et al  
*Relators,*

v.

HONORABLE WILLIAM H. WOLFF, et al,  
*Respondents,*

---

**ENTRY**

This cause originated in this Court on the filing of a complaint for a writ of mandamus and was considered in a manner prescribed by law. Upon consideration of respondents' motion to dismiss,

IT IS ORDERED by the Court that said motions to dismiss be, and the same are hereby, sustained.

IT IS FURTHER ORDERED by the Court that this cause be, and the same is hereby, dismissed.

/s/ THOMAS J. MOYER  
*Chief Justice*

**DECISION AND ENTRY OF THE  
COURT OF APPEALS OF  
MONTGOMERY COUNTY, OHIO**

Case No. 10866

**FILED**  
**COURT OF APPEALS**  
**1989 SEP 8, AM 9:24**  
**PATRICK F. MEYER**  
**Clerk of Courts**  
**Montgomery Co. OH**

**IN THE COURT OF APPEALS OF  
MONTGOMERY COUNTY, OHIO**

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**CHARLES A. FAHRIG, et al,**  
*Plaintiffs-Appellants,*

**v.**

**WALTER L. GREENE,**  
*Defendant-Appellee*

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**DECISION AND ENTRY**

**(Rendered on the 8th day  
of September, 1989)**

CHARLES A. FAHRIG, SHIRLEY A. FAHRIG, 27  
Loganwood Drive, Centerville, Ohio 45458  
Plaintiffs-Appellants, Pro Se

JANE LYNCH, 1000 Talbott Tower, Dayton, Ohio 45402  
Attorney for Defendant-Appellee

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PER CURIAM:

This matter is before us on three motions of the appellants. 1) Motion for disqualification and investigation of the court administrator of this court. That motion is overruled. 2) Motion to extend time to file brief or to complete the record on appeal. The motion to complete the record on appeal is overruled because we hereby rule that the tape stated to have been filed in the trial court in March, which was sought to be added to the record by appellants, is part of the record on appeal. The purpose for which we remanded this case to the trial court is satisfied and the trial court no longer has jurisdiction over this matter. Because the tape is now part of the record, the appellants can prepare their brief on the merits of the case which has been pending in this court since March 7, 1988, and in the trial court since 1977. The brief of the appellants is due 20 days from the date of this decision and entry. No further extensions will be granted to the appellants for any reason. The record is now settled and the material which appellants sought to be added to the record is included. There was no transcript of proceedings, as the appeal is from the granting of a summary judgment. Therefore, the brief of the appellants shall be filed within 20 days from the date of this decision and entry or the case will be dismissed for failure of the appellants to prosecute the appeal. The appellee is also notified that his brief will be due under the appellate rules 20 days from the date appellants file their brief and the case will be submitted

on appellants' brief only under Appellate Rule 18 if appellee fails to file his brief on time.

3) Appellants filed a motion for reconsideration. It is sustained. This case is hereby reinstated with the provisions that the record is now settled by us and pursuant to the briefing schedule contained herein.

This court prefers to determine appeals on their merits, if possible, and accordingly, we have granted the motion for reinstatement in an attempt to provide the parties with one more opportunity to have the appeal determined on its merits. We have settled the record and removed the remand to the trial court. The case shall proceed to determination under the Rules of Appellate Procedure and our Local Rules and all parties are required to abide by those rules, whether represented or unrepresented. Local Rule 1.

/s/ WILLIAM H. WOLFF, JR.  
*Presiding Judge*

/s/ JAMES A. BROGAN,  
*Judge*

Copies mailed to:

Charles A. Fahrig  
Shirley A. Fahrig  
Jane Lynch



**NOTICE OF APPEAL**

Case No. CA 10866  
FILED  
COURT OF APPEALS  
1989 Jul 31 PM 4:27  
PATRICK F. MEYER  
CLERK OF COURTS  
MONTGOMERY COUNTY, OH

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Case No. 89-1525  
FILED  
IN THE SUPREME COURT OF OHIO  
August 30, 1989  
MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

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IN THE COURT OF APPEALS FOR  
MONTGOMERY COUNTY, OHIO  
SECOND APPELLATE DISTRICT

CHARLES A. FAHRIG, et al,  
*Plaintiffs-Appellants,*

vs.

WALTER L. GREENE,  
*Defendant-Appellee,*

NOTICE OF APPEAL  
(Filed July 31, 1989 in the  
Court of Appeals,  
and  
Filed August 30, 1989 in the  
Supreme Court of Ohio)

Notice is hereby given that Plaintiffs-Appellants hereby appeal to the Supreme Court of Ohio from the Decision and Entry entered in this action by the Court of Appeals for the Second Judicial District, Montgomery County, State of Ohio, on June 30, 1989.

This case involves substantial constitutional questions under Article I, Section 16, of the Constitution of the State of Ohio and also under the Fourteenth Amendment to the Constitution of the United States of America.

Respectfully submitted,

/s/ Charles A. Fahrig  
/s/ Shirley A. Fahrig  
27 Loganwood Drive  
Centerville, Ohio 45458  
(513) 433-0546

PROOF OF SERVICE

A copy of the foregoing Notice of Appeal was mailed to Jane M. Lynch, Attorney for Defendant-Appellee, 1000 Talbot Tower, 131 N. Ludlow St., Dayton, Ohio 45402, by ordinary U. S. mail on August 30, 1989.

/s/ Shirley A. Fahrig

ENTRY OF THE SUPREME COURT OF OHIO

(Filed October 4, 1989)

Case No. 89-1525

THE SUPREME COURT OF OHIO

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CHARLES A. FAHRIG, et al,  
*Appellants,*

v.

WALTER L. GREENE,  
*Appellee,*

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ENTRY

On written request of appellant it is ordered that the time for filing memorandum in support of jurisdiction is hereby extended to November 3, 1989.

/s/ THOMAS J. MOYER  
*Chief Justice*

ENTRY OF THE SUPREME COURT

(Filed November 1, 1989)

Case No. 89-1525

THE SUPREME COURT OF OHIO

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CHARLES A. FAHRIG, et al,  
*Appellants,*  
v.

WALTER L. GREENE,  
*Appellee,*

---

ENTRY

This cause is pending before the Court on the filing of a motion for an order directing the Court of Appeals for Montgomery County to certify its record and as a claimed appeal as of right from said Court. Upon consideration of appellee's motion to dismiss and appellants' motion to strike to dismiss,

IT IS ORDERED by the Court that said motion to dismiss be, and the same is hereby, sustained.

IT IS FURTHER ORDERED by the Court that this cause be, and the same is hereby, dismissed.

COSTS:

Motion Fee, \$20.00, paid by Shirley A. Fahrig.  
(Court of Appeals No. CA10866)

/s/ THOMAS J. MOYER  
*Chief Justice*

ENTRY OF THE OHIO SUPREME COURT

(Filed December 13, 1989)

Case No. 89-1667  
IN PROHIBITION

THE SUPREME COURT OF OHIO

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STATE OF OHIO, ex rel.  
CHARLES A. FAHRIG, et al,  
*Relators,*

v.

HONORABLE WILLIAM H. WOLFF, et al,  
*Respondents,*

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ENTRY

This cause originated in this Court on the filing of a complaint for a writ of prohibition and was considered in a manner prescribed by law. Upon consideration of respondents' motion to dismiss,

IT IS ORDERED by the Court that said motion be, and the same is hereby, sustained.

IT IS FURTHER ORDERED by the Court that this cause be, and the same is hereby, dismissed.

/s/ THOMAS J. MOYER  
*Chief Justice*

## **CONSTITUTIONS**

### **Ohio Constitution**

#### **Article I, Section 16, REDRESS IN COURTS**

All Courts shall be open and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law and shall have justice administered without denial or delay...

### **Constitution of the United States**

#### **Amendment XIV, Section I**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **SUPREME COURT RULES OF PRACTICE**

### **RULE I. NOTICE OF APPEAL**

#### **Section 1. From Court of Appeals**

(A) The notice of appeal from the Court of Appeals must be filed in the court from which the case is appealed within thirty days from the entry of the judgment or final order appealed from and shall state:

(a) The name of the court and date of the order or judgment appealed from, and

(b) If applicable, that the case originated in the Court of Appeals, and

(c) If applicable, that the case involves a substantial constitutional question.

(d) If a timely notice of appeal is filed in the Court of Appeals by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed.

(B) A copy of that notice of appeal must be filed or offered for filing in the Supreme Court not later than thirty days after the filing of such notice in the Court of Appeals. The copy of the notice of appeal shall show the date of filing time-stamped by the Court of Appeals.

## **OHIO APPELLATE RULES**

### **RULE 26. APPLICATION FOR RECONSIDERATION**

Application for reconsideration of any cause or motion submitted on appeal shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization or within ten days after the announcement of the court's decision, whichever is the later. The filing of an application for reconsideration does not extend the time for filing a notice of appeal in a court of appeals.

Parties opposing the application must answer in writing within ten days after the filing of the application. Copies of the application, brief, and opposing briefs shall be served as prescribed for the service and filing of briefs in the initial action. Oral argument of an application for reconsideration shall not be permitted except at the request of the court.



**OHIO RULES OF CIVIL PROCEDURE****Rule 12. DEFENSES AND OBJECTIONS -  
WHEN AND HOW PRESENTED -BY PLEADING  
OR MOTION-MOTION FOR JUDGMENT ON  
THE PLEADINGS**

**(B) How Presented** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19 or Rule 19.1. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. Provided however, that the court shall consider only such matters outside the pleadings as are specifically enumerated in Rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.